No. 12,872

IN THE

United States Court of Appeals

For the Ninth Circuit

GEORGE VAARA, ANTHONY ZORICH, RALPH J. RIVERS, as the Employment Security Commission of Alaska, and R. E. SHELDON, Director and Chief Executive thereof,

Appellants,

vs.

NEW ENGLAND FISH COMPANY, a corporation, and WARDS COVE PACKING COMPANY, a corporation, for themselves and all others similarly situated,

Appellees.

Upon Appeal from the District Court for the Territory of Alaska, Division Number One.

BRIEF FOR APPELLANTS.

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BRIEF FOR APPELLANTS.

OPINION BELOW.

The opinion of the District Court, as yet unreported, will be found at R. 70.

JURISDICTION.

This suit is a consolidation of two actions (R. 69) brought by the appellees to contest the validity of appellants' administrative determination to the effect that no surplus, distributable as experience rating credits, existed in the Alaska Unemployment Compensation Fund for the credit year July 1, 1950, to June 30, 1951. This determination was made by appellants under their construction of the definition of "surplus" as that word is used in § 51-5-5(c)(1)(G) ACLA 1949. The first action is a suit for mandatory injunction filed in the District Court for the District of Alaska, Division No. 1 at Juneau, which appears in the record at pages 3 to 10 inclusive (R. 3), the jurisdiction of the District Court having been invoked under the Act of June 6, 1900, c. 786, § 4, 31 Stat. 322, as amended, 48 USCA § 101. The second action was commenced by filing in the same court a petition for review of a decision of the Employment Security Commission of Alaska, (R. 11-22 inc.) the jurisdiction of the District Court being based upon administrative procedure for such review provided for in the Alaska Employment Security Law, § 51-5-7(h)(i) ACLA 1949. Judgment and decree was entered on January 18, 1951, (R. pp. 85-87 inc.) declaring that appellants' construction of the Act had been erroneous and requiring them to recompute and assign to appellees and all others similarly situated experience rating credits for the credit year 1950-1951 (R. 85). An appeal was taken on February 14, 1951, by filing with the District Court a notice of appeal

(R. 88). The jurisdiction of this court rests on § 1291 of the New Federal Judicial Code.

QUESTIONS PRESENTED.

1. Under the provisions of the Alaska Employment Security Law (Chapter 5 of Title 51, ACLA 1949), in determining whether there is in the Unemployment Trust Fund a surplus available for credit ratings may the Employment Security Commission include as "contributions paid" with respect to pay rolls paid by all employers for the preceding calendar year both money payments and also credits applied in payment of tax for said year, as permitted by Section 51-5-5(c)(2)(G) ACLA 1949.

2. Have the appellees who, during each of the years 1948 and 1949, knew that the appellants were determining experience rating credits for said years by including as "contributions paid" both money payments and Experience Rating Credits, and who, in each of said years, have received, kept and used said Experience Rating Credits as so determined, estopped themselves from bringing, maintaining and recovering in these actions?

STATEMENT.

1. THE ALASKA EMPLOYMENT SECURITY LAW.

(a) In general.

The Alaska Employment Security Law (Act of April 2, 1937, as amended, §§ 51-5-1 to 51-5-20 ACLA 1949), until 1949 known as the Alaska Unemployment Compensation Law (hereinafter referred to as "the Act"), sets up a comprehensive plan to provide unemployment benefits for workers in the Territory during times when they are unemployed—the funds for such benefits being derived from a tax imposed on qualified employers within the Territory. Such employers are required to pay into an Unemployment Compensation Fund (hereafter referred to as the "Fund") "contributions" equal to 2.7 per cent of wages payable by them for employment during each calendar year, such payments to be made on a quarterly basis. The term "contributions" is defined in Section 1 of the Act (§ 51-5-1(d) ACLA 1949) as follows:

> "As used in this Act, unless the context clearly requires otherwise—'Contributions' means the money payments to the Alaska unemployment compensation fund required by this Act."

The objective of the Territorial legislature, in enacting this statute (as found in the note following § 51-5-20 ACLA 1949) is, in brief, to relieve economic insecurity due to involuntary employment by encouraging employers to provide more stable employment, and by the systematic accumulation of funds during periods of employment from which benefits may be

paid during periods of unemployment. Out of the funds so accumulated benefits are payable to the unemployed upon prescribed conditions and at designated rates.

(b) The experience rating provisions.

(1) Legislative history.

In 1941 the Alaska Legislature passed an amendment to the Act (Sec. 20, Chapter 40, Session Laws of Alaska, 1941), the pertinent parts of which read as follows:

> "Section 20. That Chapter 4, Sections 7(c), * * * Extraordinary Session Laws of Alaska, 1939, be amended by striking out the present sections and inserting in lieu thereof the following:
>
> Section 7(c). 'Study of Experience Rating.' The Commission shall investigate and study the operation of this act and the actual experience hereunder in the light of pertinent economic factors, with a view to determining the advisability of establishing a rating system which would equitably rate the unemployment risk and fix the contribution to the fund of each employer and would encourage stabilization."

Pursuant to that amendment the appellants made the investigations and study as directed (Testimony McLaughlin R. pp. 96 *et seq.*) and submitted to the legislature the result of said study together with a draft of recommended legislation following New York's system which was based on total pay roll, because the pay roll base furnished an inherent relationship between both benefits paid and Fund reserve

(Testimony McLaughlin, R. p. 97) (that draft was not placed in evidence but was contained in the report of the Commission to the legislature entitled "Unemployed Compensation Commission of Alaska Employer Experience Rating Studies"). With changes in the wording and additions immaterial to this case, the legislature adopted said recommended legislation as an amendment to the Act and it became Section 1, Chapter 74, Session Laws of Alaska, 1947. A copy of said Section 1 is printed in the Appendix hereto. Additions to the Commission's draft are printed in italics and the original words of the draft for which others were substituted are in brackets preceding italics.

Under this amendment experience risk of unemployment is measured by variations in the employment pay roll. Thus employers who have shown over a specified period of time, little or no annual decline in pay roll or remuneration are favored in that they are required to pay to the fund less money on their 2.7% tax (contributions) on pay roll than those employers with relatively greater declines in pay rolls. In brief, this plan is effected by first measuring the employer's risk of unemployment by various factors related to a decline in pay roll for a specified period of time. These factors are then converted into credit classes to which the employers are assigned. For each credit class a "Class Credit Factor" (Sec. 51-5-5 (2) (E) ACLA 1949) is computed. The employer's taxable pay roll for the preceding year is then multiplied by the "Class Credit Factor" and the result is

the amount of experience rating credit to which he is entitled. The next and final step is to provide the employer with a credit notice for a specified amount of credit, which amount may be applied by him in lieu of cash upon the contributions required under the Act for the four quarters of what is termed the credit year, i.e., the year commencing July 1 immediately following the cut-off date (March 15). Such credit may be used in lieu of cash contributions by such employer only for the particular credit year for which it was issued and may not be converted into cash or transferred to any other employer other than a successor. However, the amount of experience rating credits issued to each of the employers is available to said employer as a credit upon his federal Social Security tax with relation to employment the same as if it had been paid in cash (Secs. 1601, 1602 and 1903 as amended, Internal Revenue Code; Secs. 1601, 1602 and 1603, Title 26 USCA).

(2) Administrative practice and interpretation of the act relating to "contributions" and "surplus".

(A) THE APPELLANTS' COMPUTATIONS.

Under the amendment of 1947, appellants were required to make computations involving "surplus" and "reserve" in the fund and determine the amount of experience rating credits to be allowed to each qualified employer in each of the classes into which said employers fell, except Class 1, and during each of the years 1948, 1949 and 1950 the appellants, acting under the provisions of the Act as amended and after consideration of its provisions in the light of its ob-

jectives and "pertinent economic factors" and the necessity of maintaining in the fund at all times sufficient money to pay benefits (Testimony McLaughlin, R. pp. 101-2) made said computations and determinations. In making said computations and determinations, the appellants computed the surplus available for distribution as experience rating credits as the amount of money remaining in the fund after subtracting therefrom four times the amount of contributions paid for the preceding year, and they construed contributions to mean the sum of cash and credits applied in payment thereof.

In accordance with their construction set forth above, on March 15, 1950 (the cut-off date) the total amount of money in the fund was $9,397,006.93. For the preceding calendar year employers in the period had paid into the fund in money $1,370,519.14 in cash and had been issued experience rating credits in the sum of $1,016,413.49. The total contributions, as interpreted by the appellants, was the sum of two amounts, that is, $2,386,932.63. Four times this latter amount equals $9,547,730.52. Therefore the amount in the fund did not exceed four times the contributions as required, and indicated no surplus in accordance with the provisions of Section 51-5-5(2)1(G)(1)(2) ACLA 1949 (R. 29).

(B) THE APPELLEES' COMPUTATIONS.

If contributions must be construed as meaning only money payments, then four times the money payments would give a product of $5,482,076.56 which, sub-

tracted from the total amount in the fund, would leave a surplus of $3,914,930.37; but this figure is greater than 60% of such contributions. Therefore 60% of $1,370,519.14 would constitute the surplus available for experience rating credits. Moreover, the requirement that surplus amount to at least 10% of the contributions before it can be used for credits would be satisfied. Consequently $882,311.48 would constitute the amount of experience rating credits to be issued, thereby reducing the amount of cash payments that each employer above credit Class 1 would be compelled to make for the applicable credit year (R. pp. 79-82).

(C) PROCEEDINGS IN THE DISTRICT COURT.

The appellees, questioning the validity of the appellants' administrative determination that no credits would be issued for the credit year 1950-1951, and having exhausted their remedies before the Commission, instituted a suit for a mandatory injunction on October 11, 1950, to compel the appellants to issue credits for such year (R. 3). Appellants' answer was filed on November 1, 1950 (R. 54), and on the same day appellees in a separate action filed another complaint entitled "Petition for Review of Decision of Employment Security Commission of Alaska", for the purpose of complying with the administrative procedure set forth in the Act for review of the appellants' findings that no credits would be issued to appellees and other qualified employers similarly situated (R. 11). The relief sought in this latter action was identical with that prayed for in the injunction suit (R. 9, 21). Appellees filed their answer to this

petition (R. 61), and on November 13, 1950, the day of trial, the above two actions were consolidated (R. 69). At the trial John T. McLaughlin, Director of the Unemployment Insurance Division of the Alaska Employment Security Commission, and Robert Prather, Chief Accountant for the Commission, testified in behalf of appellants in support of the second and third defenses contained in appellants' answers (R. 96-131); and appellees had no witnesses. The court took the matter under advisement, and on February 27, 1950, filed its written opinion holding that although appellants' interpretation of contributions as comprising both cash payments and credits would give the Act the effect it undoubtedly should have, yet the legislature had failed, in defining "contributions" as "money payments * * *" (Sec. 51-5-1(d) ACLA 1949), to use language expressive of the intent urged by appellants, and that this obvious omission of the legislature could not be supplied by administrative construction (R. 70-75). With respect to appellants' argument that appellees were estopped from questioning the validity of the administrative construction of the Act (appellants' third defense in their answers, R. 59, 65), the court merely stated:

> "In my opinion the doctrine of estoppel urged by the defendants is not applicable to a situation such as the one here dealt with."

Finding of fact and conclusions of law were then filed in accordance with the court's opinion (R. 76), and on January 18, 1951, judgment and decree was entered (R. 85). This appeal followed (R. 88).

SPECIFICATIONS OF ERROR.

The specifications of error and the points relied upon by appellants may be summarized as follows:

1. The court erred in holding that the computation made by appellants, from which it was determined that no surplus, distributable for experience rating credits, existed in the Alaska Unemployment Compensation Fund as of March 15, 1950, was erroneous in that such computation was made on the basis of "contributions", meaning not merely cash payments but the sum of such cash payments and experience rating credits (R. 83, 88).

2. The court erred in finding that for the calendar year 1949 total contributions from all employers in the Territory amounted to $1,370,519.14, that on March 15, 1949, there existed in the Alaska Unemployment Compensation Fund a surplus which exceeded four times such contributions by $3,914,930.37, and that on said date there was in the fund $822,311.48 available for distribution as experience rating credits for the credit year July 1, 1950–June 30, 1951 (R. 79, 82, 89).

3. The court erred in holding that the appellees were not estopped from questioning appellants' determination of the meaning of "contributions" as that word is used in the definition of "surplus" in the Alaska Employment Security Law, Section 51-5-5(c)(1)(G) ACLA 1949 (R. 75, 89-90).

4. The court erred in entering judgment and decree in favor of appellees, and in ordering appellants to recompute the surplus in the Alaska Unemploy-

ment Compensation Fund as of March 15, 1950 to assign experience rating credits to appellees and all others similarly situated for the credit year July 1, 1950-June 30, 1951, and to make refunds to appellees and all others similarly situated of cash contributions made by them for the said credit year in excess of the cash contributions which would be required after experience rating credits in the amount of $822,311.48 have been issued (R. 83-84, 86-87, 90).

SUMMARY OF ARGUMENT.

A. *The language of the act did not require the construction placed upon it by the District Court and formalistic canons of statutory construction should not be used to defeat the primary legislative objective.*

The District Court based its decree upon the meaning it gave to the word "money" in the definition of "contributions" and the impact of the word "paid" which in places in the Act modifies the word "contributions", and the opinion of that court that there was in the Act no ambiguity justifying the interpretation of those words.

Those two words did not necessarily require placing upon them the meanings placed upon them by the court. Ambiguity arose because these words as construed by the court would have been destructive of, and in opposition to the purpose of the Act as a whole, and especially the amendment to the Act of 1947.

B. *The primary objective of the Alaska Employment Security Act demands that the administrative construction thereof be upheld.*

The primary purposes of the Act were to relieve hardships resulting from unemployment by the payment of benefits to the unemployed, and the most important machinery for paying such benefits are collection of taxes applicable to benefits and the building up and maintenance of a reserve fund sufficient to ensure those payments when they were most needed in times of great unemployment. The amount of that reserve has been found by the New York Commission for the study of this problem to be 10.8% of pay roll. The Alaska Act practically requires that amount of reserve.

C. *Legislative objectives will be effectuated only if the reserve in the unemployment compensation fund bears a direct relation to the total level of employment in the territory.*

D. *The construction of the Act urged by appellees will destroy established legislative objectives.*

The construction of the statute made by the District Court and contended for by appellees will reduce that 10.8% irregularly, and, ultimately, to less than half of that reserve. It will, in part, take the determination of the reserve from the Commission and give it to the employers. It will make the reserve fluctuate from year to year and in times of great unemployment when the number of unemployed requiring benefits is greatly increased and the number of employed will

be decreased and contributions to the fund therefore smaller, and benefits larger.

E. *Appellees are estopped to question the administrative construction of the Act.*

By acquiescence in the Commission's construction of the Act, and receiving credits larger than they would have received under their own construction, the appellees have estopped themselves from maintaining these actions.

ARGUMENT.

A. THE LANGUAGE OF THE ACT DID NOT REQUIRE THE CONSTRUCTION PLACED UPON IT BY THE DISTRICT COURT AND FORMALISTIC CANONS OF STATUTORY CONSTRUCTION SHOULD NOT BE USED TO DEFEAT THE PRIMARY LEGISLATIVE OBJECTIVE.

The opinion of the district judge (Tr. pp. 70-75) shows that the District Court's decree was based upon the use of two words in the law. The word "money" qualifying "payments" appearing in the statutory definition of the "contributions" and the word "paid" following the word "contributions" in parts of the Act. Money is a widely varying and inclusive term. It can be narrowed to mean legal tender only but in its generally accepted meanings it applies to any medium of exchange and is a measure of value. The rate of the required tax has not been changed. It is still 2.7% of the taxable payroll which qualified employers are still required to pay, but as a reward of merit the law makes Experience Rating

Credits a medium of exchange for the particular purpose of paying such tax.

"Paid" is an even broader word. It simply implies that a demand has been satisfied. In payment of rents crops are sometimes taken. Poll taxes were formerly paid by labor on roads. The word "paid" does not necessarily indicate payment with money. These Experience Rating Credits are issued by the Commission and placed in the hands of the employer. By the construction of the Act itself the employer may apply these credits "against contributions which are payable by him on wages * * * for *payment of contributions* * * *" (51-5-5(2)(G) ACLA 1949. (Emphasis added.) Not only are these credits payment against contributions (which is only a less odious word for taxes) in the Territory of Alaska, but they are also available as payments against the 3% Social Security taxes imposed by the United States (Secs. 1601, 1602, Internal Revenue Code, Secs. 1601, 1602, Title 26, USCA). Under these conditions it does no violence to language to say that the contribution is paid when credits are applied. That the construction placed upon the Act by the District Court is destructive of and contrary to the intent of the legislature is practically admitted by the District Court in its opinion and is pointed out in detail in the succeeding parts of this brief.

The District Court acted upon the assumption that no ambiguity appeared in the Act.

> "Ambiguity of statutes may arise otherwise than from fault of expression. An ambiguity justifying the interpretation of a statute is not

> simply that arising from the meaning of particular words but includes such as may arise in respect to the general scope and meaning of the statute when all its provisions are examined." (50 Am. Jur. Statutes, Sec. 226, p. 209.)

In *Clayton v. Colorado & S.R. Co.*, 55 F. (2d) 977, 82 ALR 417, 422, a case involving the question of exemption from a tax, Judge Phillips in delivering the opinion said:

> "The primary rule in the construction of statutes is to ascertain and give effect to the intent of the legislative body. (Citations.) Where the language of a statute is plain and unambiguous, and conveys a clear and definite meaning, resort must not be had, ordinarily, to rules of construction, but the statute must be given its plain and obvious meaning. (Citations.) Where, however, the language is of doubtful meaning, or where adherence to the strict letter would lead to injustice or absurdity, or result in contradictory provisions, it devolves upon the court to ascertain the true meaning. (Citations.) The general design and purpose of a statute should be kept in mind and its provisions should be given a fair and reasonable construction with a view to effecting its purpose and object. (Citations.)"

The District Court ignored entirely the established rules of construction set forth in American Jurisprudence and the decision above quoted. The provisions of the Act must be effective to carry out the intent and purpose of the Act, and the effect of the interpretation contended for by the appellees upon those provisions will be discussed particularly

and in detail in the succeeding portions of the argument.

Formalistic canons of statutory construction should not be used to defeat the dominant legislative objective.

One rule of statutory construction states that when a statute contains no ambiguity, it must be taken literally and given effect according to its language, and that this rule should not be put aside to avoid hardships that may sometime result from giving effect to the legislative purpose. *Commissioner of Immigration v. Gottlieb,* 265 U.S. 310, 313. But here the legislature itself has indicated its intent not to maintain strict adherence to the literal meaning of certain words and terms by providing before each legislative definition the words "unless the context clearly requires otherwise" (§51-5-1 ACLA 1949). It may be true, as the District Court has held, that "context" refers to the "immediate rather than the remote company in which the words are found by which their meaning must be judged" (R. 75); but in order to determine properly whether the context clearly requires that some different meaning be attributed to a particular word, which is part of the process of interpretation, not only the context but also the purposes of the law and the circumstances under which the words were employed must be considered. If in considering the context, in the light of obvious legislative objectives, the interpretation of a statutory provision according to the letter without regard to the legislative policy and purposes of the law, would defeat the objectives to be achieved, then the Court does

not have to adhere to such strictness but should rather so interpret the law as to give to it the effect intended. This is well stated by Mr. Justice Sutherland in the case of *Ozawa v. United States,* 260 U.S. 178, at p. 194, 67 L. Ed. 199, 207 as follows:

> "It is the duty of this court to give effect to the intent of Congress. Primarily this intent is ascertained by giving the words their natural significance; but if this leads to an unreasonable result, plainly at variance with the policy of the legislation as a whole, we must examine the matter further. We may then look to the reason of the enactment, and inquire into its antecedent history, and give it effect in accordance with its design and purpose, sacrificing, if necessary, the literal meaning in order that the purpose may not fail."

See also, *Helvering v. New York Trust Company,* 292 U.S. 455, 464-465, 78 L. Ed. 1361, 1363.

The rule that the strict letter of a statute must yield to its evident spirit and purpose when necessary to give effect to the intent of the legislature does not lose its effectiveness because of a legislative definition. First of all, in the original Unemployment Compensation Act of 1937 the literal meaning of contributions, even in the absence of a statutory definition, could have meant only money payments since one could only gather from reading the statute that what was meant to be "paid" was a certain percentage of the employers' pay roll. The statutory definition, then, in Section 1(d) of the Act (§51-5-1(d) ACLA 1949) was superfluous and added nothing to the meaning of the word contributions, and thus could not possibly

detract from the force of the rule mentioned above. Secondly, although statutory definitions control the meaning of words in the usual case, this is not always the rule, for here when the definition of contributions is read into the 1947 experience rating amendment to the Act in a mechanical fashion, thus destroying the major purpose of the Act, then we have an unusual case and one for an exception to the rule that statutory definitions control. It is inconceivable that the Territorial legislature intended to destroy the major dominant purpose of the Alaska Employment Security Law by such a strict mechanical adherence to the lifeless words of this statute. As the United States Supreme Court stated in a case where the statutory definition of a word in the Langshoremen's and Harbor Workers' Compensation Act was concerned, *Lawson v. Suwannee S. S. Co.,* 336 U.S. 198, 201, 93 L. Ed. 611, 614-15:

> "If Congress intended to use the term 'disability' as a term of art, a shorthand way of referring to the statutory definition, the employer must pay total compensation. If Congress intended a broader and more usual concept of the word, the judgment below must be affirmed. Statutory definitions control the meaning of statutory words, of course, in the usual case. But this is an unusual case. If we read the definition into §8(f)(1) in a mechanical fashion, we create obvious incongruities in the language, and we destroy one of the major purposes of the second injury provision: the prevention of employer discrimination against handicapped workers. We have concluded that Congress would not have intended such a result."

Another rule of construction says that there is a presumption that identical words in different parts of the same Act are intended to have the same meaning. But this presumption is not rigid and readily yields when there is such a variation in the connection in which the words are used to warrant the conclusion that they were employed in different parts of the same act with different intent. *Atlantic Cleaners & Dyers v. United States,* 286 U.S. 427, 433, 76 L. Ed. 1204, 1207. Such is the case here. When the original Act was passed in 1937, the word contributions necessarily meant only money since there were no experience rating credits at that time, and hence employers simply paid cash into the unemployment compensation fund without any exemptions or reduced rates. But when in 1947 the experience rating provisions were added to the Act, they were not the type of an amendatory Act that changed the existing language. They added something entirely new to what was already the law. It could not have been the purpose of the amendment to now allow certain exemptions from the unemployment tax and at the same time to permit the unemployment compensation fund to become insolvent —something that would certainly happen eventually if the meaning of contributions as used in the original Act was carried over unchanged into the definition of "surplus" as that word is used in the experience rating provisions of the 1947 amendment. There certainly has been a sufficient showing here to warrant the conclusion that the word "contributions" as it was used in the original Act and again in the amenda-

tory Act was employed in these two places with a different intent.

> "There is no rule of statutory construction which precludes the court from giving to the word the meaning which the legislature intended it should have in each instance." *Atlantic Cleaners & Dyers v. United States,* supra, p. 433, 76 L. Ed. 1204, 1207.

There is, however, a rule of statutory construction with which appellants will not quarrel. This rule, which is universally recognized and accepted, is to the effect that the practical construction of a statute by the executive department charged with its administration is entitled to the highest respect from the courts, especially when contemporaneous with the first workings of the statute and when such department suggested the enactment of the statute or cooperated in its development. *United States v. American Trucking Associations,* 310 U.S. 534, 549, 84 L. Ed. 1345, 1354; *Colgate Co. v. United States,* 320 U.S. 422, 426, 88 L. Ed. 143, 147; *White v. Winchester Club,* 315 U.S. 32, 41, 86 L. Ed. 619, 625; *Norwegian Nitrogen Co. v. United States,* 288 U.S. 294, 315, 77 L. Ed. 796, 807. This rule is applicable even though the administrative interpretation was not reached in a trial by adversary form but is evidenced by interpretative bulletins or informal rulings. *Skidmore v. Swift & Co.,* 323 U.S. 134, 139-140, 89 L. Ed. 124, 129.

In the case at bar the legislature directed the appellants to study and investigate the possibility of adding experience rating provisions to the Employ-

ment Security Law (Section 20 of Chapter 40 Session Laws of Alaska 1941) and the evidence shows that after the study was made, it was concluded that the plan of experience rating which was finally adopted was best suited to achieve the primary objective of providing a fund out of which benefits could be paid to the unemployed with due regard at all times for the adequacy of such fund. (R. 96-98.) Thus, the appellants, whose duty it was to make these provisions of the law operative, could be presumed to know better than anyone else the interpretation of particular terms of the Act which would be necessary in order to make such operation efficient and in conformity with the objectives of the legislature. Moreover, as the evidence also shows (R. 101-102), the administrative construction in this case was reached not without some thought and consideration by the appellants. That these things should be given consideration by the Court has been very ably pointed out by the Supreme Court of the United States in the case of *Skidmore v. Swift & Co.*, supra, where at pages 139-140, 89 L. Ed. 124, 129, it was said:

> "But the Administrator's policies are made in pursuance of official duty, based upon more specialized experience and broader investigations and information than is likely to come to a judge in a particular case * * * We consider that the rulings, interpretations and opinions of the Administrator under this Act, while not controlling upon the courts by reason of their authority, do constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance. The weight of such a

judgment in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control."

B. THE PRIMARY OBJECTIVE OF THE ALASKA EMPLOYMENT SECURITY LAW DEMANDS THAT THE ADMINISTRATIVE CONSTRUCTION OF THE ACT BE UPHELD.

Although one of the purposes of the experience rating provisions of the Act is to allocate the social costs of unemployment to the employers responsible for those costs, and to induce employers to stabilize their operations, thus preventing unemployment, the dominant objective of the legislature in enacting this law was to relieve economic insecurity due to unemployment by the systematic accumulation of funds during periods of employment from which benefits can be paid during periods of unemployment. (See Declaration of Policy following §51-5-20 ACLA 1949.) This major end to be achieved must be considered with respect to the experience rating provisions as well as with respect to the original unemployment compensation act as it existed before such provisions were added, for it could not be presumed that the legislature intended to induce stabilization of employment by experience rating and at the same time to forget about the accumulation of funds for potential unemployment benefits.

Keeping this in mind, it is clear that when the legislature provided in the 1947 amendment that certain employers should be entitled to make payments upon contributions by means of experience rating credits (which has the practical effect of reducing the amount of money paid into the unemployment compensation fund where accumulations are made for unemployment benefits), the adequacy of such fund for payment of those benefits would have to be safeguarded. This means that the fund must at all times be sufficiently large to pay benefits during periods of unemployment while the amount of money coming into such fund is being reduced by reason of experience rating credits. Thus, this is nothing more than saying that before a surplus would exist in the fund to be distributed as credits, the amount of money in the fund must exceed a fixed minimum reserve.

It is as to what factors determine such reserve that appellants' contentions in this case rest. In 1947 the legislature provided that a surplus distributable as credits would exist in the fund when the amount of money therein exceeded four times the amount of contributions paid by employers for the preceding calendar year. (§51-5-5 ACLA 1949.) At that time, since no experience rating credits had before been issued, the contributions for the calendar year 1946 consisted entirely of cash payments made by employers at the rate of 2.7 per cent of their *taxable pay rolls*. Hence, in specifying what made up the surplus, the legislature, in effect, decided what the required reserve in the fund should be; that is, it determined that the Fund would be adequate in amount

to allow a reduced rate of contributions when the total monies in the fund exceeded four times 2.7 per cent (or 10.8 per cent) of the preceding year's *total taxable pay rolls.* If this, then, was a legislative determination of what was to be the reserve requirement for the first year that experience rating credits were issued, there is no reason for assuming that the reserve should be any different or should be measured or ascertained by some other factors or conditions in subsequent years. Consequently, appellants in determining whether a surplus existed for the years 1948-1949-1950, did so knowing that such was their intent when they worded and recommended the draft which the legislature adopted and on the assumption that the legislature had the same intent, and thus based their determination on the ground that "contributions" (as that word is used in the definition of "surplus", §51-5-5(c)(1)(G) ACLA 1949), meant all payments including experience rating credits, since the sum of these two items constituted 2.7 per cent of the *total taxable pay rolls* in the Territory. If this interpretation had not been followed and only cash payments were considered to constitute contributions in the determination of surplus, then since previous issuance of credits had reduced the amount of cash that many employers were obliged to pay to something less than 2.7 per cent of their *pay rolls,* the surplus—and the adequacy of the fund—would no longer be based upon four times 2.7 per cent of total taxable payrolls, but would vary from year to year depending upon how much experience rating credit had been issued for each preceding credit year.

Appellants felt that only by maintaining in the fund a reserve based from year to year on a fixed and unvarying *percentage* of *total pay rolls* could the express legislative purposes be accomplished and the solvency of the fund adequately protected. It was not without serious thought and consideration that this conclusion was reached. The uncontradicted testimony of John T. McLaughlin, Director of the Unemployment Insurance Division of the Commission, shows clearly that when the legislature enacted the experience rating provisions of the Territorial statute, a determination by the State of New York (whose law on this subject is similar to that of the Territory) of what should constitute a surplus in its relation to a reserve requirement in the unemployment compensation fund, was considered and followed by appellants in preparing for presentation to the Alaska Legislature the experience rating amendments to the Alaska Act. (R. 97-99.) The definition of "surplus" in the New York law (R. 111) shows that surplus depends upon contributions payable upon the *pay rolls reported by employers for the preceding calendar year;* and the "Report of the New York State Joint Legislative Committee on Industrial and Labor Conditions in 1945" (Defendants' Exhibit B; R. 112), which indicates the results of that Committee's studies of the possibility of providing for a rate variation in employers' contributions, expressly recommends to the legislature that when it enacts such legislation, it should keep in mind as a primary consideration, that the amount distributable as surplus should bear a direct relation, not merely to cash contributions, but

to *total pay rolls*—which would be the same as cash plus experience rating credits. On page 53 of this report the Committee stated:

> "IV. Unemployment and Health Insurance. Subparagraph 2. Rate Variation * * * Whatever plan is ultimately adopted should be based upon two intrinsic principles which must underlie the application of any system of rate variation.
>
> "The first is that the solvency of the Fund must not be jeopardized. In this connection, the less advantageous economic conditions affecting employment in the postwar period should be taken into account in determining estimates of the Fund's future solvency. The provisions of several bills introduced in this year's Legislature meet this test by *requiring a constant reserve of 10.8 per cent of the previous year's total taxable payroll (equivalent to four times the previous year's contributions to the Fund).*" (Emphasis supplied.) (R. 112.)

Thus, the legislative history of the New York statute upon which the Territorial Act was based (R. 97-99) supports appellants' conclusion that contributions should be interpreted as comprising cash plus credits, or 2.7 per cent of total taxable pay rolls. Cf. *Lawson v. Suwance S.S. Co.,* 336 U.S. 198, 205, 93 L. Ed. 611, 616.

C. LEGISLATIVE OBJECTIVES WILL BE EFFECTUATED ONLY IF THE RESERVE IN THE UNEMPLOYMENT COMPENSATION FUND BEARS A DIRECT RELATION TO THE TOTAL LEVEL OF EMPLOYMENT IN THE TERRITORY.

Appellants' contention that a distributable surplus must depend solely upon total *taxable pay rolls* and not merely upon the amount of cash that employers pay in any one year is the only logical construction to be given to the Act. If a surplus exists only when the total monies in the Fund exceed four times cash contributions plus experience rating credits (i.e. four times 2.7 percent of total *taxable pay rolls*), then when business conditions are good and *pay rolls* are increasing in size and amount, the required reserve in the Fund must also increase before any surplus can be available for distribution as credits. And this is desirable, for when employment rises, there is increased potential unemployment; therefore, the amount of the Fund reserve should increase before any experience rating credits should be allowed. On the other hand, poor business conditions and a consequent decrease in pay rolls will have the necessary effect of reducing the required reserve; and this is entirely reasonable, for although workers will then be drawing benefits in increased numbers, there is no great potential liability being built up. Moreover, in the latter case the reduced reserve requirement could well result in an increased surplus to be distributed as credits, thus assisting in industry's recovery.

Consequently, under this construction of contributions (as comprising both cash and credits), as long as the amount in the Fund reserved for poten-

tial unemployment benefits is 10.8 per cent of total taxable pay rolls (four times 2.7% for the preceding year), it is probably large enough to withstand a large benefit drain caused by a prolonged depression. Such contributions are thus a measure of the potential benefit payments in that figuring on a basis of a constant 10.8 per cent of total taxable pay rolls, they directly reflect the amount of wages payable and the level of employment.

It is evident that the legislature, when it established a system of reduced rates of contributions by means of experience rating credits, intended that the Fund out of which unemployment benefits were to be paid could never be reduced below a minimum point measured by total pay rolls—or the level of employment—in the Territory. And this legislative purpose can be effected only if, in determining surplus, the word "contributions" is construed to include both cash payments and experience rating credits.

D. THE CONSTRUCTION OF THE ACT URGED BY APPELLEES WILL DESTROY ESTABLISHED LEGISLATIVE OBJECTIVES.

In looking at appellees' construction of the Act as it relates to the well defined legislative purposes, an entirely different result is reached—one that could not conceivably have been intended by the legislature. Unlike contributions that consist of both cash and credits, the cash contributions alone are not directly and always related to potential benefit payments since they may be governed, in part, under the appellees'

construction, by the amount of credits issued the preceding year. Thus, the necessity that there be a fixed reserve, bearing a direct relation to the total employment, would be meaningless since under the appellees' system of experience rating, there is not necessarily a relation between cash contributions and potential benefit payments. This is succintly brought out by appellants' Exhibit C. (R. 120.) There it was assumed that over a period of five years the total level of employment remained unchanged; that is, that the sum of cash payments plus experience rating credits for each of those years would amount to $2,500,000.00. Assuming further that the amount of money in the Fund would be sufficiently greater than four times the contributions (four times $2,500,000.00), to allow a surplus to be distributed in the amount of 60 per cent of such contributions, the amount of experience rating credits for the first year, under either appellants' or appellees' computations, would be the same; that is, $1,500,000.00. But after the first year the difference between the two computations becomes very apparent. Under appellants' construction of the statute, for the second year and each succeeding year, the amount of credits issued would be the same; that is, $1,500,000.00. Moreover, the reserve (four times contributions, or four times 2.7 per cent of total taxable pay rolls), being the amount in the Fund below which no credits could be issued, would remain constant at $10,000,000.00. This is as it should be since if the total level of employment remains unchanged, there is no reason for the amount of reserve to change.

Under appellees' theory, however, a very different result is reached. Since only cash contributions determine what should constitute the reserve, four times this amount for the second year would result in a reserve of only $4,000,000.00, a drop of $6,000,-000.00 from the previous year's reserve. It is difficult to conceive what rational basis there could be for this sudden decrease in the reserve and for the unexplainable fluctuations in subsequent years when at all times the total level of employment remains completely unchanged. If the reserve is a protection against potential unemployment, as it must be, there can be no justification for its changing in amounts during times that potential unemployment remains constant. Obviously, the only explanation for this is that appellees' interpretation of contributions must be erroneous.

Appellees' interpretation appears even less sound when it is considered that under the Act (§51-5-5(c)(2)(G) ACLA 1949) employers need not use their credits in any one quarter, but may distribute them throughout the four quarters of the credit year as they see fit. If, in a hypothetical case, employers held back all of their credits until the last two quarters of the credit year (March 31 and June 30), then, as of the cut-off date of March 15 (§51-5-5(c)(1)(D) ACLA 1949), the amount of contributions for the preceding calendar year, under appellees' theory of contributions as being comprised solely of cash, would be greater than if those employers had not paid their contributions entirely in cash for the two quarters preceding the cut-off date, but had used some of their

credits for that period. It is quite evident, therefore, that employers in thus holding back their credits would, in effect, be controlling the amount of reserve in the Fund since, under appellees' theory, reserve is determined not by total employment, but merely by the amount of cash payments made by employers. Which is more reasonable—that employers determine what shall constitute a reserve in the Fund adequate in amount to meet potential unemployment payments, or that the adequacy of the Fund be always directly related to the total level of employment in the Territory? This question answers itself.

Consequently, it is apparent from the language of the Act, its legislative history, its declared objectives and purposes and the contemporaneous administrative construction placed upon it by those charged with its execution, that the word "contributions" as it is used in the definition of "surplus" in the Alaska Employment Security Law (§51-5-5(c)(1)(G) ACLA 1949) must necessarily be comprised of both cash payments and experience rating credits, and that the opinion of the District Court to the contrary was erroneous.

E. APPELLEES ARE ESTOPPED TO QUESTION THE ADMINISTRATIVE CONSTRUCTION OF THE ACT.

A formidable objection to appellees' interpretation of the Act is apparent when it is considered that they have acquiesced in the administrative construction for previous years. The facts in this respect are alleged in appellants' "Third Defense" of their answers to the

complaint and petition (R. 59, 65). In 1948 and 1949 the credits that were issued to appellees and all others similarly situated were based upon the interpretation of contributions which had been constantly followed by appellants from the time the experience rating amendment to the Act first went into effect (R. 102). It was not until 1950, however, that appellees suddenly decided that those persons charged with the administration of the Act had been wrong in their interpretation all the time. The reason for this sudden change in position, after such previous acquiescence, is apparent. For the credit year July 1, 1949, to June 30, 1950, had the surplus been computed on the basis of cash contributions alone, without consideration being given to experience rating credits, appellees would have suffered a reduced credit for that particular year (R. 123). In other words, appellees for that year acquiesced in the administrative construction to their obvious advantage. But suddenly the situation was not so attractive. For the credit year 1950-1951 the appellants, under the interpretation of the Act that had been followed constantly, found that there was no distributable surplus. Appellees then realized that it was no longer to their advantage to accept the administrative construction, and hence they commenced this suit in an attempt to show that appellants' interpretation of the Act was no longer correct.

Although the lower court dismissed this defense of estoppel with very few words (R. 75), it should have been extremely reluctant to declare appellants' interpretation of the law invalid at the instance of those

who had taken advantage of such interpretation. Appellants are unable to discover any exalted principle of equity that permits one to secure a considerable monetary advantage from one construction of a statute, sanctioned by him, and then when the monetary advantage ceases to exist, to repudiate such construction and allege that it is invalid. By acquiescence in the manner of computing surplus under the Act, both the appellants and appellees have given definite character and effect to this interpretation of the law; and the appellees should not now be allowed, after deriving substantial benefits from such acquiescence, to deny such interpretation and completely reverse their position. Cf. *Hartwell Mills v. Rose,* 61 F. (2d) 441, 444; *Hurley v. Commission,* 257 U.S. 223, 225, 66 L. Ed. 206, 207. The rule, sound and well established, that "the court will not pass upon the constitutionality of a statute at the instance of one who has availed himself of its benefits", *Ashwander v. Tennessee Valley Authority,* 297 U.S. 288, 348, 80 L. Ed. 688, 711, should be applicable in a situation like this where the validity of the construction of a statute is involved.

Circuit Judge Hutcheson, writing the decision in *Houston Production Co. v. United States,* 4 Fed. Supp., pp. 716, 717, a case involving income tax, said:

> " 'Taxation,' as it has been said many times, is an eminently practical matter (citations). Because it is, it has been generally considered that 'where the government and the taxpayer, by acquiescence in the manner of performing an act, have given a definite character and effect to it, the taxpayer will not be permitted, after deriving

benefits from this acquiescence, to deny this character and effect to it, or to change his position at the government's expense.' "

CONCLUSION.

The primary objective of the Alaska Employment Security Law—to relieve economic insecurity due to unemployment by the systematic accumulation of funds during periods of employment from which benefits can be paid during periods of unemployment—can be achieved only by adherence to the original and constantly followed administrative construction of the statute. Only this construction will permit the maintenance of a reserve in the Unemployment Compensation Fund in an amount which will always be measured directly by the total level of employment in the Territory and thus always adequate to meet such potential unemployment. Appellees' construction, on the other hand, not only is completely unrelated to any conceivable legislative purpose, but will have the deleterious effect of defeating the major objective of the Act. Considering, then, the dominant purpose of the law and the only way in which it can be attained, formalistic canons of statutory construction and the lifeless words of the statute should not be relied upon to the extent that the law will cease to have the beneficial effect for which it was enacted. Moreover, appellees, having acquiesced and sanctioned the administrative interpretation to their financial benefit, should be estopped now to change their posi-

tion and repudiate that interpretation of the law when it suddenly ceases to offer them the advantages that they had previously enjoyed.

It is, therefore, respectfully submitted that the decree of the District Court should be reversed and the case remanded to the District Court for entry of judgment dismissing appellees' petition and complaint.

Dated, May 25, 1951.

Respectfully submitted,

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(Appendices Follow.)

Appendices.

Appendicies

APPENDIX A

Session Laws of Alaska, 1949, Chapter 53 i

APPENDIX B

Alaska Compiled Laws Annotated, 1949:
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(Administrative Procedure)

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Appendix A

Chapter 53, Session Laws of Alaska, 1949.

Section 1. The agency named the "Unemployment Compensation Commission of Alaska" as established in Sec. 51-5-10 ACLA 1949 is hereby given the new designation of "Employment Security Commission of Alaska" and shall hereafter be known by said new name.

Section 2. Sec. 51-5-20 ACLA 1949 is hereby amended to read as follows:

Sec. 51-5-20 SHORT TITLE. This Act shall be known and may be cited as the Alaska Employment Security Law.

Section 3. Wherever the words "Unemployment Compensation Commission of Alaska" or "Commission" appear in Secs. 51-5-1 to 51-5-20 inclusive ACLA 1949, same shall be deemed to refer to the "Employment Security Commission of Alaska".

Approved March 19, 1949.

* * * * * * *

Appendix B

ALASKA EMPLOYMENT SECURITY LAW.

§§51-5-1—51-5-20, Alaska Compiled Laws Annotated, 1949.

§51-5-1. Definitions. As used in this Act, unless the context clearly requires otherwise—

* * *

(d) "Contributions" means the money payments to the Alaska unemployment compensation fund required by this Act.

* * *

§51-5-5. Contributions.

(a) *Payment.* (1) Contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this Act, with respect to wages payable for employment occurring during such calendar year. Such contributions shall become due and be paid by each employer to the Commission for the fund in accordance with such regulation as the Commission may prescribe, and shall not be deducted, in whole or in part, from the wages of individuals in such employer's employ.

(2) In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

(b) RATE OF CONTRIBUTION. Each employer shall pay contributions equal to the following per-

centages of wages payable by him with respect to employment:

(1) 1.8 per centum with respect to employment during the calendar year 1937;

(2) with respect to employment after December 31, 1937, 2.7 per centum.

(c) "EXPERIENCE RATING CREDITS."

(1) MEANING OF TERMS. As used in this Subsection,

(A) "Computation date" means January first (1st) of any year in which credits are being computed.

(B) "Effective date" means June thirtieth (30th) next following the computation date.

(C) "Credit year" means the four consecutive calendar quarters immediately following the effective date.

(D) "Cut-off date" means March fifteenth (15th) next following the computation date.

(E) "Qualified employer" means *any** employer who was an employing unit and had employment for which remuneration was payable in each of the four consecutive calendar years immediately preceding the computation date and who filed any wage reports *which may have been* required thereon on or before the cut-off date, and has paid all contributions due on or before the effective date, provided however, that no such employer shall be deemed a qualified employer

*Words added to original draft are in italics.

if he has had or has reported no employment for four or more consecutive calendar quarters in such four calendar years, and provided further, that when an employer or prospective employer has acquired all or substantially all the operating assets of another [employer]** *employing unit,* the experience of both during such four calendar years shall be jointly considered for the purpose of determining and establishing the acquiring party's qualification for, and amount of, credit; and the transferring employing unit shall be divested of its experience, *and provided further that to the extent permitted by and in compliance with the requirements of Section 1602 of the Federal Internal Revenue Code, the Commission may by regulation provide for the fair and equitable allocation of experience with unemployment risk as measured by annual percentage declines in payrolls, to or among two or more employers whose operations have been transferred, joined, combined, merged or consolidated because of governmental regulations limiting a natural product, raw materials, supplies or manpower.*

Notwithstanding the provisions of this subsection, no transfer of experience from a predecessor to a successor employer not previously a qualified employer under this subsection shall be effective if the successor's payroll in the last four completed calendar quarters following the date of the transfer is in excess of $50,000 and exceeds the predecessor's payroll for

**Words in brackets immediately preceding italics are the words for which italics were substituted.

the last four completed calendar quarters immediately preceding the date of transfer by 300 percent or more, provided, however, that no provision, section, clause or part of this Act shall apply to any acquisition or transfer which is determined by the Commission to have been primarily for the purpose of obtaining a more favorable rate of contribution under this Section.

(F) "Payroll" means all [wages] *remuneration* payable for employment *exclusive of remuneration in excess of three thousand dollars ($3,000) payable by any one employing unit to an individual during any one calendar year.*

(G) "Surplus" means the lesser of:

(1) That amount by which the moneys in the Unemployment Compensation Trust Fund, as of the cut-off date, exceed four times the amount of contributions paid on or before the cut-off date with respect to the payrolls reported by all employers on or before said cut-off date for the preceding calendar year, or

(2) an amount equal to sixty per cent (60%) of the contributions so paid for the preceding calendar year. No portion of the surplus shall be credited to any employer unless the amount of the surplus is at least ten per cent (10%) of the amount of the contributions paid on the payrolls reported by all employers on or before the cut-off date for the preceding calendar year.

(2) ESTABLISHMENT OF CREDITS. The amount of credit for each qualified employer shall be established in the following manner:

(A) Qualified employers shall be grouped into six credit classes, to be designated as classes 6, 5, 4, 3, 2 and 1, in accordance with the sum of the annual percentage payroll declines in regard to the three consecutive calendar years immediately preceding the computation date, each such percentage to be obtained by dividing any decline of the payroll of a qualified employer in any calendar year from the preceding calendar year by the amount of the payroll in such preceding year, each division being carried out to the fourth decimal place and the remaining fraction, if any, disregarded.

Each qualified employer shall be in the credit class which is listed below on the same horizontal line on which the sum of annual percentage payroll declines of such employer appear.

Sum of Annual Percentage Payroll Declines	Credit Class
Less than 10	6
10 or more but less than 30	5
30 or more but less than 50	4
50 or more but less than 70	3
70 or more but less than 80	2
80 or more	1

(B) A "class weight" shall be assigned to each credit class as follows:

Credit Class	Class Weight
6	6
5	5
4	4
3	3
2	2
1	0

(C) The "class product" shall be obtained by dividing the total of the payrolls for the calendar year immediately preceding the computation date for all qualified employers in the same class by the total of the payrolls of all qualified employers for such year, such division being carried out to the fourth decimal place, and multiplying the quotient by the class weight.

(D) The surplus to be credited to each class shall be the product obtained by dividing the class product for each class by the sum of the class products for all classes and multiplying the quotient by the surplus to be credited to all employers. No portion of the surplus shall be credited to credit class 1.

(E) The "class credit factor" shall be the quotient obtained by dividing that portion of the surplus assigned to any class of qualified employers by the sum of the payrolls of all employers in that class for the calendar year immediately preceding the computation date, such division being carried out to the fourth decimal place and the remaining fraction, if any, disregarded.

(F) That portion of the surplus which is to be credited to any qualified employer is the product obtained by multiplying his taxable payroll in the calendar year immediately preceding the computation date by the class credit factor of his class.

(G) As soon as practicable after the effective date each qualified employer shall be furnished a notice showing the amount of credit to which he is entitled, if any. The amount shown on the notice may be ap-

plied only against contributions which are payable by him on wages payable in the credit year and reported not later than the date prescribed by the Commission for payment of contributions on wages payable in the last quarter of such credit year, except that when an employer or prospective employer has acquired all or substantially all of the operating assets of another employer, any unused portion of the credit of the transferring employer shall be transferred to the acquiring party, provided that the transferring employer has submitted all reports and has paid all contributions and interest due to the date of such acquisition.

The first credit notices shall be effective with the credit year beginning July 1, 1947.

(H) Corrections and Appeals:

(1) Corrections or modifications of an employer's payroll shall not be taken into account for the purpose of an increase of his credit unless such corrections or modifications were established on or before the cut-off date.

(2) Corrections or modifications of an employer's payroll may be taken into account within three years after the cut-off date, for the purpose of a reduction of his credit.

(3) Within one year from the effective date the Commission may reconsider the credit allowed any employer whenever it finds that there has been an error in the computation thereof. When an increase is

due, it shall issue to such employer a supplementary credit notice reflecting the increase in the employer's credit; however, when a credit notice has been issued to an employer whose credit is *reduced,* such notice shall be recalled and a revised notice issued. If the credit shown by the incorrect notice has already been applied in payment of contributions in excess of the correct credit, the employer shall thereupon become liable for payment into the fund of an amount equal to the excess of the credit taken by him over the credit to which he is entitled and such amount shall be deemed and collected as contributions payable under this act.

(4) Increases or reductions of an employer's credit shall not affect the credits established or to be established for any other employer, and shall further not affect any other computation made under this Subsection.

(5) Any employer dissatisfied with the amount of credit shown on his credit notice may file a request for adjustment with the Commission within thirty (30) days of the mailing of such credit notice to an employer, showing wherein the amount of credit may be in error. Should such request for adjustment be denied, the employer, within ten (10) days of the mailing of such notice of denial of adjustment, may file with the Appeal Tribunal a petition for hearing which shall be heard in the same manner as a petition for a denial of refund. The appellate procedure prescribed by this Act for further appeal shall apply to all denials of adjustment.

§51-5-20. * * * *

Declaration of policy: L Ex Sess 1937, ch 4, p 24, states that "as a guide to the interpretation and application of this Act, the public policy of this Territory is declared to be as follows:

"Economic insecurity due to unemployment is a serious menace to the health, morals and welfare of the people of this Territory. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the Legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life. This can be accomplished by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment from which benefits may be paid for periods of unemployment, thus maintaing purchasing power and limiting the serious social consequences of poor relief assistance. The Legislature, therefore, declares that in its considered judgment the public good, and the general welfare of the citizens of this Territory, require the enactment of this measure, under the police power of the Territory, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own."

* * * * * * *

[1]Appendix C

ALASKA EMPLOYMENT SECURITY LAW.

§§ 51-5-14(f) and 51-5-7(h) & (i), Alaska Compiled Laws Annotated, 1949

(Administrative Procedure)

§ 51-5-14. Collection of contributions.

* * *

(f) ADJUSTMENTS OR REFUNDS. No later than two years after the date any contributions or interest have been paid, an employer who has paid such contributions or interest may file with the Commission a petition in writing for an adjustment thereof in connection with subsequent contribution payments, or for a refund thereof when such adjustment cannot be made. If the Commission upon an ex parte consideration shall determine that such contributions or interest, or portion thereof, were erroneously collected, he shall allow such employer to make an adjustment thereof without interest in connection with subsequent contribution payments by him, or if such adjustment cannot be made the Commission shall refund said amount without interest from the fund. For like causes and within the same period, adjustment or refund may be made on the Commission's own initiative. If the Commission finds that upon ex parte consideration it cannot readily determine, that such adjustment or refund should be allowed, it shall deny such application and notify the employer in writing. Within thirty days after such notification

shall have been mailed or delivered to such employer, whichever is the earlier, the employer may file a petition in writing with the Commission for a hearing thereof: Provided, that this right shall not apply in those cases in which assessments have been appealed from and have become final as provided in section 14(e) [§ 51-5-14(e) herein]. The petition shall set forth the reasons why such hearing should be granted and the amount which the petitioner believes should be adjusted or refunded. If no such petition be filed within said thirty days, the determination of the Commission as stated in said notice shall be final. The petition for refund shall be heard by the District Court.

§ 51-5-7. Claims for benefits.

* * *

(h) APPEAL TO COURTS. Any decision of the Commission in the absence of an appeal therefrom as herein provided shall become final thirty days after the date of notification or mailing thereof, and judicial review thereof shall be permitted only after any party claiming to be aggrieved thereby has exhausted his administrative remedies as provided by this Act. The Commission shall be deemed to be a party to any judicial action involving any such decision, and may be represented in any such judicial action by any qualified attorney employed by the Commission and designated by it for that purpose, or at the Commission's request by the Attorney General.

(i) COURT REVIEW. Within thirty days after the decision of the Commission has become final, any

party aggrieved thereby may secure judicial review thereof by commencing an action in the United States District Court against the Commission for the review of such decision, in which action any other party to the proceeding before the Commission shall be made a defendant. In such action, a petition which need not be verified, but which shall state the grounds upon which a review is sought, shall be served upon the Commission, or upon such person as the Commission may designate and such service shall be deemed completed service on all parties, but there shall be left with the party so served as many copies of the petition as there are defendants and the Commission shall forthwith mail one such copy to each such defendant. With its answer, the Commission, shall certify and file with said Court all documents and papers and a transcript of all testimony taken in the matter, together with the Commission's findings of fact and decision therein. The Commission may also, in its discretion, certify to such court questions of law involved in any decision. In any judicial proceeding under this Section, the findings of the Commission as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of said Court shall be confined to questions of law. Such actions, and the questions so certified, shall be heard in a summary manner and shall be given precedence over all other civil cases except cases arising under the Workmen's Compensation Law of this Territory. An appeal may be taken from the decision of the United States District Court as is pro-

vided in civil cases. It shall not be necessary, in any judicial proceeding under this Section, to enter exceptions to the rulings of the Commission and no bond shall be required for entering such appeal. Upon the final determination of such judicial proceeding the Commission shall enter an order in accordance with such determination. A petition for judicial review shall not act as a supersedeas or stay unless the Commission shall so order.